

Exhibit A

1 Jack Perko, SBN 164529
2 **LAW OFFICES OF JACK PERKO**
3 26895 Aliso Creek Road, Suite B66
4 Aliso Viejo, CA 92656
5 Phone (949) 390-4442
6 Fax (949) 916-1039

7 Attorney for Plaintiff
8 David Gamez

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

12/31/2014 at 02:44:35 PM
Clerk of the Superior Court
By Mary M Johnson, Deputy Clerk

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 **DAVID GAMEZ**

13 Plaintiff,

14 vs.

15 **REPUBLIC WASTE SERVICES OF**
16 **SOUTHERN CALIFORNIA, LLC,**
17 **WILLIAM GABRIEL, an individual,**
18 **and DOES 1-25, inclusive,**

19 Defendants.

CASE NO. 30-2014-00763908-CU-WT-CJC

**COMPLAINT FOR EMPLOYMENT
DISCRIMINATION**

Judge David Chaffee

1. Disability Discrimination;
2. Interference with FMLA Rights;
3. Retaliation;
4. Harassment;
5. Failure to Prevent Discrimination;
6. Breach of Implied Contract; and
7. Breach of Covenant of Good Faith and Fair Dealing

[JURY TRIAL DEMANDED]

20 Plaintiff, DAVID GAMEZ (hereinafter "PLAINTIFF") brings this action against
21 defendants for general, compensatory and punitive damages resulting from
22 Defendants' unlawful and tortious conduct and, as grounds therefore, alleges:

23 **PARTIES**

24 1. PLAINTIFF is informed and believes and thereon alleges that REPUBLIC
25 WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC ("DEFENDANT" or
26 "REPUBLIC") is a limited liability company doing business in this judicial district at
27 2731 East Coronado Street, Anaheim, California in the County of Orange.
28

1 2. REPUBLIC is in the business of trash collection, disposal, and recycling.

2 3. PLAINTIFF is informed and believes and thereon alleges that WILLIAM
3 GABRIEL was at all relevant times herein, a resident of the County of Orange employed
4 by REPUBLIC in a managerial or executive position, with the power to hire and fire,
5 and was acting within the course and scope of such agency and employment in doing
6 the things herein alleged.

7 4. At all times material hereto, REPUBLIC was an employer within the
8 meaning of California Government Code §12926(d), and as such was prohibited from
9 discriminating against employees on the basis of disability.

10 5. REPUBLIC employs in excess of 50 employees.

11 6. At all times material hereto, PLAINTIFF suffered from Type 2 diabetes, a
12 disability within the meaning of Government Code §12926(k)(1)(B).

13 7. At all times material hereto, PLAINTIFF was protected by Government
14 Code §12940, which prohibits discrimination and harassment in employment on the
15 basis of disability.

16 8. PLAINTIFF is informed and believes and thereon alleges that events
17 relevant to this complaint occurred in the County of Orange, California.

18 9. Plaintiff is ignorant of the true names and a capacity of the defendants
19 sued herein as Does 1 - 25, inclusive, and therefore sues these defendants by such
20 fictitious names. Plaintiff will amend this Complaint to allege their true names and
21 capacities when ascertained. Plaintiff is informed and believes and thereon alleges that
22 each of the fictitiously named defendants are responsible in some manner for the
23 occurrences alleged herein, and that Plaintiff's damages alleged herein were
24 proximately caused by these defendants.

25 10. Plaintiff is informed and believes and thereon alleges that at all times
26 relevant hereto, defendants and their agents, employees, and Does 1 - 25 inclusive, in
27 doing the things hereinafter alleged, were acting within the course and scope of such
28 agency and employment. To the extent that said conduct and omissions were

1 perpetrated by defendants and their agents, the defendants confirmed and ratified said
2 conduct and omission.

3 11. Whenever and wherever reference is made to individuals who are not
4 named as plaintiff or defendants in this Complaint but were agents, servants,
5 employees and or supervisors of defendants, such individuals at all relevant times acted
6 on behalf of defendants within the course and scope of their employment.

7 **FACTUAL ALLEGATIONS**

8 12. On or about September 15, 1987, PLAINTIFF was hired by
9 DEFENDANT'S predecessor as a Roll-Off/Un-Loader Driver. PLAINTIFF'S duties,
10 among other things, required that he drive and operate a truck, and pick up trash bins
11 and garbage.

12 13. Throughout his 26 years of employment, PLAINTIFF competently
13 performed his job duties and was given numerous pay increases.

14 14. As previously alleged, PLAINTIFF suffers from Type 2 diabetes. In early
15 July 2013, PLAINTIFF became very ill due to severe pain in his legs due to his
16 uncontrolled diabetic condition. PLAINTIFF applied for, and was given FMLA leave,
17 and was off work for approximately 2 1/2 months.

18 15. PLAINTIFF was scheduled to return to work on September 2, 2013.
19 Instead of being returned to his driving duties, WILLIAM GABRIEL required
20 PLAINTIFF to attend driver education/safety classes, which would be held over a
21 period of seven (7) days. The instructor, David Jacobs, instructed PLAINTIFF to report
22 to a location in Los Angeles, where he was to watch instructional videos. PLAINTIFF
23 did as instructed, and attended the classes in Los Angeles the entire week of September
24 2-6, 2013.

25 16. On September 9, 2013, PLAINTIFF was instructed to attend class at a
26 training location in Anaheim, where he viewed videos with one other person for that
27 one day. That day, the instructor, David Jacobs, told PLAINTIFF that he could return
28 to his job the following day, and promised to call WILLIAM GABRIEL, who managed

1 the Anaheim facility, to let him know that PLAINTIFF had completed the training
2 program.

3 17. On Tuesday, September 10, 2013, PLAINTIFF returned to work.
4 Although PLAINTIFF normally operated the truck by himself, that day, REPUBLIC
5 assigned another driver to accompany him for the day. On the last trip of the day,
6 PLAINTIFF was involved in a minor accident when he backed into some sheets of
7 granite, resulting in some breakage.

8 18. On September 11, 2013, PLAINTIFF had a meeting with management,
9 including WILLIAM GABRIEL, and was told to go home to relax and rest. GABRIEL
10 commented that PLAINTIFF appeared to be "stressed out" and promised PLAINTIFF
11 that he would be paid for the remainder of the week while he was off. GABRIEL also
12 told PLAINTIFF that REPUBLIC would call him when he could return to work.

13 19. DEFENDANT called PLAINTIFF on October 7, 2013, instructing him to
14 report to work the following day.

15 20. On October 8, 2013, PLAINTIFF reported to work. Instead of allowing
16 PLAINTIFF to go on his route, GABRIEL presented PLAINTIFF with a document
17 which PLAINTIFF believed to be a warning notice that had something to do with the
18 accident PLAINTIFF had in September. PLAINTIFF signed the notice, which was in
19 English, without understanding it, because PLAINTIFF does not read English, and was
20 immediately terminated. PLAINTIFF later discovered that the warning was for failing
21 to complete training, even though PLAINTIFF had done so.

22 21. On October 9, 2013, PLAINTIFF'S Union Representative told him that he
23 was terminated for not completing the safety driver training courses, which was untrue,
24 as PLAINTIFF had been told to return to his regular duties by David Jacobs following
25 the final video session in Anaheim on September 9, 2013. At no point was PLAINTIFF
26 told that he had more training sessions to do.

27 22. PLAINTIFF is informed and believes, and thereon alleges, that GABRIEL
28 manufactured the reason for PLAINTIFF'S termination as being the failure to complete

1 the required driver safety program because a violation of a safety rule is grounds for
 2 immediate termination, which, under REPUBLIC'S collective bargaining agreement
 3 with its drivers, does not require progressive discipline. Had REPUBLIC desired to
 4 terminate PLAINTIFF for the minor accident he had in September, it would have had to
 5 provide PLAINTIFF with three warnings prior to terminating PLAINTIFF. However,
 6 REPUBLIC and GABRIEL manufactured a false reason supporting their actions
 7 because they viewed PLAINTIFF as a liability because of his diabetes, and were looking
 8 for a reason to terminate PLAINTIFF and to circumvent the collective bargaining
 9 agreement.

10 23. PLAINTIFF was discriminated against, harassed and ultimately
 11 terminated, for having a serious medical condition, because PLAINTIFF had taken
 12 leave under the FMLA, and because REPUBLIC viewed him as a liability after he
 13 returned from leave.

14 24. PLAINTIFF has complied with the provisions of California Government
 15 Code §12930 et seq. as an administrative prerequisite to filing this Complaint. On or
 16 about September 29, 2014, and within one year of the date of the last discrimination,
 17 PLAINTIFF filed a charge of discrimination with the California Department of Fair
 18 Employment and Housing, which immediately issued the requested right to sue letter
 19 (See, Attachment I).

20 **FIRST CAUSE OF ACTION**

21 **EMPLOYMENT DISCRIMINATION BASED ON DISABILITY OR**

22 **PERCEIVED DISABILITY - VIOLATION OF FEHA**

23 **(Government Code §12900 et seq.)**

24 **(Against REPUBLIC and DOES 1 - 25, inclusive)**

25 25. PLAINTIFF refers to and incorporates by reference each and every
 26 allegation contained in each and every paragraph above, as though fully set forth
 27 herein.

28 26. The Fair Employment and Housing Act ("FEHA") codified in Government

1 Code §12900 et seq. makes it unlawful for an employer to discriminate against an
2 employee on the basis of the employee's disability.

3 27. DEFENDANT engaged in unlawful employment practices in violation of
4 the FEHA by terminating the PLAINTIFF on the basis of the PLAINTIFF'S disability or
5 perceived disability, and because PLAINTIFF had taken FMLA leave and attempted to
6 return to work on expiration of leave.

7 28. PLAINTIFF is informed and believes and based thereon alleges that the
8 PLAINTIFF'S disability was a motivating factor in DEFENDANT'S decision to
9 terminate the PLAINTIFF'S employment and other discrimination against the
10 PLAINTIFF in violation of Government Code §12940(a).

11 29. As a direct and proximate result of DEFENDANT'S above-described
12 discriminatory conduct in violation of the California Fair Employment and Housing Act
13 Government Code §12900 et seq., PLAINTIFF has suffered and will continue to suffer
14 actual damages, including lost earnings, medical costs and other employment benefits,
15 in a sum in excess of the jurisdictional limit of this Court, the exact amount of which is
16 not yet known, which amount will be proved at the time of trial.

17 30. As a further direct and proximate result of DEFENDANT'S above-
18 described discriminatory conduct in violation of the California Fair Employment and
19 Housing Act Government Code §12900 et seq. PLAINTIFF has suffered and will
20 continue to suffer emotional damages in a sum in excess of the jurisdictional limit of
21 this Court, the exact amount of which is not yet known, which amount will be proved at
22 the time of trial.

23 31. In bringing this action, PLAINTIFF has been required to retain the
24 services of counsel. Pursuant to California Government Code § 12965(b), PLAINTIFF is
25 entitled to an award of attorneys' fees according to proof.

26 32. The aforementioned acts taken toward the PLAINTIFF were taken,
27 authorized and/or ratified by DEFENDANT'S officers, directors, managerial and
28 supervisory employees who participated in the unlawful conduct as alleged above or

1 who failed to take remedial measures after becoming aware of said unlawful acts. The
 2 aforementioned acts of DEFENDANTS were willful, oppressive, malicious and
 3 fraudulent, and were done in conscious disregard of the rights of the PLAINTIFF, in
 4 that DEFENDANT'S decision to terminate the PLAINTIFF'S employment based on the
 5 PLAINTIFF'S disability or disability as it was perceived by DEFENDANTS was done
 6 with intent to injure the PLAINTIFF and with the intent to prevent the exercise of the
 7 PLAINTIFF'S statutory rights and obligations. The PLAINTIFF is therefore entitled to
 8 punitive damages in an amount which will be proved at the time of trial.

9 **SECOND CAUSE OF ACTION**

10 **INTERFERENCE WITH FAMILY MEDICAL LEAVE ACT RIGHTS**

11 **(Against REPUBLIC and DOES 1 - 25)**

12 33. PLAINTIFF refers to and incorporates by reference each and every
 13 allegation contained in each and every paragraph above, as though fully set forth
 14 herein.

15 34. PLAINTIFF was eligible for leave under the Family Medical Leave Act
 16 (FMLA).

17 35. REPUBLIC is an employer subject to the requirements of the Family
 18 Medical Leave Act, and it had a legal duty to not interfere with PLAINTIFF'S rights
 19 under that Act.

20 36. On his return to work from leave, DEFENDANT was required to return
 21 PLAINTIFF to his same or a comparable position. DEFENDANT did not do so.

22 37. DEFENDANT interfered with PLAINTIFF'S FMLA rights when it
 23 harassed him on his return to work, suspended him, then terminated him on a pretext
 24 soon after returning to work.

25 38. DEFENDANT interfered with PLAINTIFF'S FMLA rights when it
 26 terminated PLAINTIFF' employment because he had taken FMLA leave for his own
 27 serious health condition.

28 39. As a proximate and direct result of DEFENDANT'S violation of the FMLA,

1 PLAINTIFF suffered loss, injury and damage in an amount to be determined according
2 to proof at trial.

3 40. In bringing this action, PLAINTIFF has been required to retain the
4 services of counsel. Pursuant to California Government Code § 12965(b), PLAINTIFF is
5 entitled to an award of attorneys' fees according to proof.

6 41. DEFENDANT'S violation of PLAINTIFF'S FMLA rights was wanton,
7 willful, intentional, malicious, oppressive, fraudulent and betrayed a reckless disregard
8 for PLAINTIFF'S rights, thus entitling PLAINTIFF to an award of punitive damages.

9 **THIRD CAUSE OF ACTION**

10 **RETALIATION**

11 **(Against REPUBLIC and DOES 1 - 25, inclusive)**

12 42. PLAINTIFF refers to and incorporates by reference each and every
13 allegation contained in each and every paragraph above, as though fully set forth
14 herein.

15 43. During his employment, PLAINTIFF engaged in the legally protected
16 activity of requesting, and taking, FMLA leave, and attempting to return to work once
17 leave was over.

18 44. DEFENDANT unfairly suspended, then terminated PLAINTIFF'S
19 employment on a pretext. PLAINTIFF'S protected activities were motivating factors for
20 DEFENDANT'S decision to terminate PLAINTIFF'S employment.

21 45. As a direct and proximate result of DEFENDANT'S above-described
22 discriminatory conduct in violation of the California Fair Employment and Housing Act
23 Government Code §12900 et seq., PLAINTIFF has suffered and will continue to suffer
24 actual damages, including lost earnings and other employment benefits, in a sum in
25 excess of the jurisdictional limit of this Court, the exact amount of which is not yet
26 known, which amount will be proved at the time of trial.

27 46. As a further direct and proximate result of DEFENDANT'S above-
28 described discriminatory conduct in violation of the California Fair Employment and

1 Housing Act, PLAINTIFF has suffered and will continue to suffer emotional damages in
2 a sum in excess of the jurisdictional limit of this Court, the exact amount of which is not
3 yet known, which amount will be proved at the time of trial.

4 47. In bringing this action, PLAINTIFF has been required to retain the
5 services of counsel. Pursuant to California Government Code § 12965(b), PLAINTIFF is
6 entitled to an award of attorneys' fees according to proof.

7 48. The aforementioned acts taken toward PLAINTIFF were taken,
8 authorized and/or ratified by DEFENDANT'S officers, directors, managerial and
9 supervisory employees who participated in the unlawful conduct as alleged above or
10 who failed to take remedial measures after becoming aware of said unlawful acts. The
11 aforementioned acts of DEFENDANTS were willful, oppressive, malicious and
12 fraudulent, and were done in conscious disregard of the rights of PLAINTIFF, in that
13 DEFENDANT'S act of retaliation was done with intent to injure PLAINTIFF and with
14 the intent to prevent the exercise of PLAINTIFF'S statutory rights and obligations.
15 PLAINTIFF is therefore entitled to punitive damages in an amount which will be
16 proved at the time of trial.

17 **FOURTH CAUSE OF ACTION**

18 **FOR HARASSMENT BASED ON DISABILITY**

19 **(Against WILLIAM GABRIEL, REPUBLIC, and DOES 1 - 25, inclusive)**

20 49. PLAINTIFF refers to and incorporates by reference each and every
21 allegation contained in each and every paragraph above, as though fully set forth
22 herein.

23 50. During his employment, and following his return from leave, PLAINTIFF
24 was subjected to a pattern of harassment by WILLIAM GABRIEL, based on his
25 disability, including but not limited to verbal abuse, being required to attend unneeded
26 training courses, suspending PLAINTIFF, unfairly writing PLAINTIFF up, then
27 terminating PLAINTIFF on a pretext.

28 51. The foregoing conduct by defendant, WILLIAM GABRIEL was based on

1 PLAINTIFF'S disability and created an intimidating and hostile work environment.
2 Such conduct constitutes illegal harassment in violation of Government code §12940 et
3 seq., and other provisions of FEHA.

4 52. REPUBLIC is liable for said harassment by WILLIAM GABRIEL because
5 at all times relevant Defendant, WILLIAM GABRIEL worked in a supervisory,
6 managerial, or executive position.

7 53. REPUBLIC is also independently liable, because it knew or should have
8 known, through supervisors, of the illegal harassment by all employees and failed to
9 take immediate and appropriate corrective action. Such conduct violates Government
10 Code §12940 et seq.

11 54. As a direct and proximate result of the above-described harassment in
12 violation of the California Fair Employment and Housing Act Government Code §12900
13 et seq., PLAINTIFF has suffered and will continue to suffer actual damages, including
14 lost earnings, and other employment benefits, in a sum in excess of the jurisdictional
15 limit of this Court, the exact amount of which is not yet known, which amount will be
16 proved at the time of trial.

17 55. As a further direct and proximate result of the above-described
18 harassment in violation of the California Fair Employment and Housing Act
19 Government Code §12900 et seq., PLAINTIFF has suffered and will continue to severe
20 emotional distress, including depression, sleep disturbance, headaches, and other
21 symptoms, entitling his to non-economic damages in a sum in excess of the
22 jurisdictional limit of this Court, the exact amount of which is not yet known, which
23 amount will be proved at the time of trial.

24 56. In bringing this action, PLAINTIFF has been required to retain the
25 services of counsel. Pursuant to California Government Code § 12965(b), PLAINTIFF is
26 entitled to an award of attorneys' fees according to proof.

27 57. The aforementioned acts taken toward PLAINTIFF were taken,
28 authorized and/or ratified by DEFENDANTS officers, directors, and managerial and

1 supervisory employees who participated in the unlawful conduct as alleged above or
 2 who failed to take remedial measures after becoming aware of said unlawful acts. The
 3 aforementioned acts were carried out by Defendants, WILLIAM GABRIEL and
 4 REPUBLIC in a malicious, willful and oppressive manner with the intent to injure and
 5 damage PLAINTIFF. The aforementioned acts of Defendants, WILLIAM GABRIEL and
 6 REPUBLIC were willful, oppressive, malicious and fraudulent, and were done in
 7 conscious disregard of the rights of PLAINTIFF, in that the harassment due to
 8 PLAINTIFF'S disability or disability as it was perceived by Defendants and race was
 9 done with intent to injure PLAINTIFF and with the intent to prevent the exercise of his
 10 statutory rights and obligations. PLAINTIFF is therefore entitled to punitive damages
 11 in an amount which will be proved at the time of trial.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

14 **(Against REPUBLIC and DOES 1 - 25, inclusive)**

15 58. PLAINTIFF incorporates by reference each and every allegation contained
 16 in each and every paragraph above, as though fully set forth herein.

17 59. DEFENDANT failed to take all reasonable steps necessary to prevent
 18 discrimination in its workplace.

19 60. DEFENDANT had inadequate policies and procedures, and failed to
 20 implement or enforce the policies and procedures they did have, to prevent
 21 discrimination in the workplace.

22 61. As a legal and proximate result of DEFENDANT'S actions, PLAINTIFF
 23 has suffered special and general damages in an amount to be proven at trial.

24 62. In bringing this action, PLAINTIFF has been required to retain the
 25 services of counsel. Pursuant to California Government Code § 12965(b), PLAINTIFF is
 26 entitled to an award of attorneys' fees according to proof.

27 63. The aforementioned acts taken toward PLAINTIFF were taken,
 28 authorized and/or ratified by DEFENDANT'S officers, directors, managerial and

1 supervisory employees who participated in the unlawful conduct as alleged above or
 2 who failed to take remedial measures after becoming aware of said unlawful acts. The
 3 aforementioned acts of DEFENDANT were willful, oppressive, malicious and
 4 fraudulent, and were done in conscious disregard of the rights of PLAINTIFF, in that
 5 DEFENDANT'S decision to terminate PLAINTIFF'S employment based on
 6 PLAINTIFF'S age, disability or disability as it was perceived by DEFENDANT was done
 7 with intent to injure PLAINTIFF and with the intent to prevent the exercise of
 8 PLAINTIFF'S statutory rights and obligations. PLAINTIFF is therefore entitled to
 9 punitive damages in an amount which will be proved at the time of trial.

10 **SIXTH CAUSE OF ACTION**

11 **WRONGFUL DISCHARGE – BREACH OF IMPLIED CONTRACT**

12 **(Against REPUBLIC and DOES 1 - 25, inclusive)**

13 64. PLAINTIFF refers to and incorporates by reference each and every
 14 allegation contained in each and every paragraph above, as though fully set forth
 15 herein.

16 65. PLAINTIFF had an implied contract not to be terminated without cause.
 17 This contract was formed in his twenty-four years of employment with REPUBLIC.

18 66. PLAINTIFF received regular pay raises throughout his employment with
 19 REPUBLIC. PLAINTIFF'S performance at all times was, and continued to be
 20 outstanding. PLAINTIFF relied on the policy and procedure manual of REPUBLIC, the
 21 consistent praise of his work, his favorable performance reviews, the industry practice
 22 of for cause termination, and pay raises to support his belief that his contract of
 23 employment included a covenant that he could not be terminated in the absence of
 24 good cause.

25 67. At all times herein relevant, PLAINTIFF continued to properly perform
 26 his functions pursuant to the implied and express employment agreement throughout
 27 his employment with REPUBLIC, except when prevented from performing any of said
 28 functions by the actions of the management of REPUBLIC or when on medical leave.

1 68. At all times relevant to this action, PLAINTIFF had been ready, willing
 2 and able to satisfactorily perform all appropriate functions imposed upon him as a
 3 consequence of his employment with REPUBLIC, and PLAINTIFF had satisfactorily
 4 performed all of his obligations. However, notwithstanding his superior performance,
 5 REPUBLIC discharged PLAINTIFF wrongfully, in violation of the contract and its own
 6 policies and procedures.

7 69. PLAINTIFF are further informed and believe, and based upon such
 8 information and belief, allege that the real reason for PLAINTIFF'S termination was, in
 9 part, his diabetic condition and in part because he had taken FMLA leave.

10 70. Said actions of REPUBLIC, as set forth above, constituted a breach of the
 11 implied and express employment agreement that he would not be terminated without
 12 good cause. The reason cited for PLAINTIFF'S termination was pretextual, and
 13 manufactured in order to circumvent DEFENDANT'S personnel policies.

14 71. As a proximate and actual result of REPUBLIC'S wrongful discharge of
 15 PLAINTIFF and failure to perform in accordance with the terms of the employment
 16 agreement, PLAINTIFF has suffered and continues to suffer substantial losses in
 17 earnings, and other employment benefits which he would have received had REPUBLIC
 18 not breached the said agreement, all to his damage in an amount which cannot be
 19 ascertained with certainty at this time since these damages are ongoing and cumulative.
 20 PLAINTIFF is informed and believes that these damages will substantially exceed the
 21 minimum jurisdictional requirements of this court.

22 **SEVENTH CAUSE OF ACTION**

23 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

24 **(Against REPUBLIC and DOES 1 - 25, inclusively)**

25 72. PLAINTIFF refers to and incorporates by reference each and every
 26 allegation contained in each and every paragraph above, as though fully set forth
 27 herein.

28 73. The aforesaid employment contract contained an implied covenant of

1 good faith and fair dealing by which DEFENDANT promised to give full cooperation to
2 PLAINTIFF and his performance under said employment contract and to refrain from
3 doing any act which would prevent or impede PLAINTIFF from performing all the
4 conditions of the contract to be performed by him, or any act that would interfere with
5 PLAINTIFF'S employment of the fruits of said contract. Specifically, said covenant of
6 good faith and fair dealing.

7 74. Fair dealing required DEFENDANTS to fairly, honestly and reasonably
8 perform the terms and conditions of the agreement.

9 75. DEFENDANT breached their covenant of good faith and fair dealing with
10 PLAINTIFF by terminating PLAINTIFF. DEFENDANTS terminated PLAINTIFF
11 without good or sufficient cause, for reasons extraneous to the contract, and for the
12 purpose of frustrating PLAINTIFF'S employment and the benefits of the contract.

13 76. As a result of DEFENDANT'S violations of said implied covenant of good
14 faith and fair dealing, PLAINTIFF has been damaged in that he has lost income, his
15 ability to perform his part of the employment agreement was impeded, he was unfairly
16 suspended and held up to ridicule, all of which combined to produce destruction or
17 impairment of PLAINTIFF'S valuable property interests, i.e., his prospect of continuing
18 future employment with DEFENDANT and receipt of continued compensation; and
19 substantial losses in earnings and other employment benefits.

20 PRAYER

21 Wherefore, PLAINTIFF prays for judgment as follows:

22 1. For compensatory damages including medical costs, lost wages, earnings
23 and other employee benefits and all other sums of money, according to proof;

24 2. For compensatory damages for mental anguish and emotional distress,
25 according to proof;

26 3. For costs of suit;

27 4. For prejudgment interest;

28 5. For an award of punitive damages, according to proof;

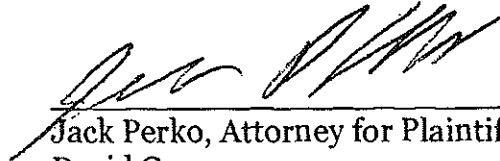
6. For an award of attorneys' fees, according to proof; and
7. For such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of all claims by jury to the extent authorized by law.

DATED: December 31, 2014

LAW OFFICES OF JACK PERKO



Jack Perko, Attorney for Plaintiff
David Gamez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT I



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1284 | TTY 800-700-2320
www.dfeh.ca.gov

Sep 29, 2014

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 335538-128978

Right to Sue: Gamez / Republic Waste Services Of Southern California, LLC,

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

1
2 **Co-Respondents:**

3 Republic Services Of Southern California- Anaheim
4 William Gabriel
5 2731 E. Coronado Street
6 Anaheim California 92806
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of
7 David Gamez, Complainant.

DFEH No. 335538-128978

8 vs.

9 Republic Waste Services Of Southern California,
10 LLC, Respondent.
11 18500 N Allied Way
Phoenix, Arizona 85054

12
13 Complainant alleges:

14 1. Respondent Republic Waste Services Of Southern California, LLC, is a Private Employer subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant
believes respondent is subject to the FEHA.

16 2. On or around Oct 08, 2013, complainant alleges that respondent took the following adverse actions against
17 complainant: **Discrimination, Retaliation Denied employment, Denied family care or medical leave,**
18 **Denied reinstatement, Terminated,** . Complainant believes respondent committed these actions because of
19 their: **Disability, Engagement in Protected Activity, Family Care or Medical Leave, Medical Condition -**
including Cancer .

20 3. Complainant David Gamez resides in the City of Orange, State of California. If complaint includes co-
21 respondents please see below.
22

1
2 **Additional Complaint Details:**

3 Republic Waste Services of southern California, LLC, dba Republic Services of
4 Southern California- Anaheim terminated me or failed to hire me in retaliation for
5 claiming an injury. Republic Waste Services of southern California, LLC, dba Republic
6 Services of Southern California- Anaheim terminated me or failed to hire me in
7 retaliation for having a medical condition. Republic Waste Services of southern
8 California, LLC, dba Republic Services of Southern California- Anaheim discriminated
9 against me because of my disability in violation of FEHA. William Gabriel harassed me
10 because of my disability or perceived disability. Republic Waste Services of southern
11 California, LLC, dba Republic Services of Southern California- Anaheim failed to
12 prevent discrimination, harassment and retaliation. Republic Waste Services of
13 southern California, LLC, dba Republic Services of Southern California- Anaheim failed
14 to return me back to work after my FMLA leave.
15
16
17
18
19
20
21
22

1 VERIFICATION

2 I, **Jack Perko**, am the Attorney for Complainant in the above-entitled complaint. I have read the foregoing
3 complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters
4 which are therein alleged on information and belief, and as to those matters, I believe it to be true.

5 On Sep 29, 2014, I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct.

7 **Aliso Vijo, CA**
8 **Jack Perko**
9
10
11
12
13
14
15
16
17
18
19
20
21
22



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR RHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA 95758
800-894-1684 | TTY 800-700-2320
www.dfch.ca.gov

Sep 29, 2014

David Gamez
11361 Church Street
Orange California 92869

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 335538-128978

Right to Sue: Gamez / Republic Waste Services Of Southern California, LLC,

Dear David Gamez,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Sep 29, 2014 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

Enclosures

cc: Republic Services Of Southern California- Anaheim William Gabriel

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jack Perko SBN 164529 Law Office of Jack Perko 26895 Aliso Creek Road, Suite B66 Aliso Viejo, CA 92656 TELEPHONE NO.: (949) 390-4442 FAX NO.: (949) 916-1039 ATTORNEY FOR (Name): David Gamez.		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 12/31/2014 at 02:44:35 PM Clerk of the Superior Court By Mary M Johnson, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center			
CASE NAME: Gamez v. Republic Waste Services of Southern California, LLC			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2014-00763908-CU-WMT-CJC JUDGE: Judge David Chaffee DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

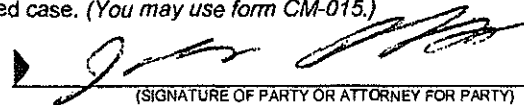
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 31, 2014

Jack Perko

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Exhibit B

1 Mark G. Kisicki (CA Bar No. 150057)
2 Mark.Kisicki@ogletreedeakins.com
3 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4 Esplanade III, Suite 800
5 2415 East Camelback Road
6 Phoenix, Arizona 85016
7 Telephone: 602.778.3700
8 Facsimile: 602.778.3750

9 Attorney for Defendant Republic Waste
10 Services of Southern California, LLC

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ORANGE**

13 DAVID GAMEZ,

14 Plaintiff,

15 vs.

16 REPUBLIC WASTE SERVICES OF
17 SOUTHERN CALIFORNIA, LLC, WILLIAM
18 GABRIEL, an individual, and DOES 1-25,
19 inclusive,

20 Defendants.

Case No. 30-2014-00763908-CU-WT-CJC

Assigned to Hon. David Chaffee

**REPUBLIC WASTE SERVICES OF
SOUTHERN CALIFORNIA, LLC'S
ANSWER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES**

Original Complaint Filed: December 31, 2014
Trial Date: Not Set

21 Defendant REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC
22 ("Defendant") answers the Complaint filed by David Gamez as follows:¹

23 **GENERAL AND SPECIFIC DENIALS**

24 Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant denies
25 generally and specifically each and every allegation contained in the Complaint and further denies
26 that Plaintiff has sustained damages in the sum or manner alleged, or in any other sum or manner
27 whatsoever. Defendant further denies, generally and specifically, that Plaintiff is entitled to any
28 relief whatsoever.

¹ Defendant William Gabriel has not been served with the Complaint.

1 **AFFIRMATIVE DEFENSES**

2 Without waiving or excusing Plaintiff's burdens of proof and production of evidence or
3 admitting that it carries the burden of proof as to any of the issues raised in the Complaint,
4 Defendant asserts the following separate and independent defenses and prays for judgment as set
5 forth below. Defendant further gives notice that it intends to rely upon such additional defenses as
6 may become available during discovery in this action and reserves the right to amend its Answer to
7 assert any such defenses.

8 **FIRST AFFIRMATIVE DEFENSE**

9 1. Defendant alleges that the Complaint, and each and every cause of action asserted
10 therein, fails to allege facts sufficient to state a cause of action against Defendant upon which relief
11 can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. The Complaint is barred, in whole or in part, because Plaintiff's conduct
14 proximately caused his injuries.

15 **THIRD AFFIRMATIVE DEFENSE**

16 3. To the extent Plaintiff is attempting to base his claims on acts or occurrences outside
17 of the applicable statute of limitations, Plaintiff's claims are barred, in whole or in part.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 4. Defendant alleges that the Complaint, and each and every cause of action asserted
20 therein, is barred to the extent that Plaintiff has failed to satisfy the statutory prerequisites to sue
21 and to exhaust all administrative remedies.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 5. Defendant alleges, on information and belief, that Plaintiff has failed to take
24 reasonable steps to mitigate his damages, if any. Accordingly, Plaintiff is barred from recovering
25 any damages, or any recovery of damages must be reduced.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 6. Defendant alleges, based on information and belief, that Plaintiff is barred from
28

1 recovery in whole or in part to the extent that Defendant discovers evidence that would have
2 resulted in his termination.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 7. Defendant alleges that Plaintiff's claims are barred by the doctrine of avoidable
5 consequences and because Defendant exercised reasonable care to prevent and promptly correct
6 any unlawful behavior including, but not limited to, having in place appropriate policies and
7 procedures, and that Plaintiff unreasonably failed to take advantage of any procedures or corrective
8 opportunity provided by Defendant or to otherwise avoid harm. Defendant further alleges that
9 Plaintiff's reasonable use of its policies and procedures would have prevented the purported harm
10 about which Plaintiff now complains.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 8. Defendant alleges that Plaintiff's Complaint, to the extent that it seeks punitive
13 damages, violates Defendant's rights to protection from "excessive fines" as provided in the Eighth
14 Amendment of the United States Constitution and in Article I, Section 17 of the Constitution of the
15 State of California and its rights to procedural due process under the Fifth and Fourteenth
16 Amendments to the United States Constitution and under the California Constitution and, therefore,
17 fails to state a cause of action upon which punitive damages may be awarded.

18 **NINTH AFFIRMATIVE DEFENSE**

19 9. To the extent that Plaintiff seeks punitive damages in this action, such damages are
20 not recoverable as neither Defendant nor any of its officers, directors, or managing agents
21 committed any alleged oppressive, fraudulent or malicious acts, authorized or ratified such an act,
22 had advance knowledge of the unfitness, if any, of the employee or employees, if any, who
23 allegedly committed such acts, or employed any such employee or employees with a conscious
24 disregard of the rights or safety of others as required by California Civil Code Section 3294(b).

25 **TENTH AFFIRMATIVE DEFENSE**

26 10. Plaintiff's claims are barred because all decisions regarding his employment and the
27 termination thereof were made for legitimate, non-discriminatory, and non-retaliatory reasons

1 and/or business purposes.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 11. Defendant alleges that Plaintiff's claims are barred in part because any breakdown in
4 the interactive process was due to his failure to engage in the interactive process in good faith.

5 **TWELVE AFFIRMATIVE DEFENSE**

6 12. Plaintiff was not discharged from employment or discriminated against because of
7 any alleged attempt by Plaintiff to exercise his rights under the Family Medical Leave Act
8 ("FMLA").

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 13. Any alleged act or omission by Defendant that allegedly violated any provision of
11 the FMLA was made in good faith and with a reasonable belief that they were not in violation of
12 the FMLA which precludes a recovery of liquidated damages.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 14. Defendant alleges that Plaintiff is barred from seeking damages for physical, mental
15 and emotional injuries allegedly suffered as a result of his employment or the termination thereof,
16 in that his sole and exclusive remedy for any such purported injuries is governed by the
17 California's Workers Compensation Act, California Labor Code §§ 3600 *et seq.*

18 WHEREFORE, Defendant prays for relief as follows:

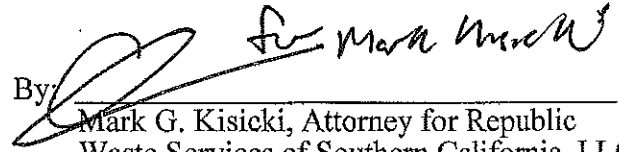
- 19 1. That Plaintiff's Complaint be dismissed in its entirety and with prejudice;
20 2. That Plaintiff take nothing by this action and that judgment be entered against
21 Plaintiff and in favor of Defendant;
22 3. That Defendant be awarded all costs and attorneys' fees incurred in defending this
23 action; and
24 4. That Defendant be granted such other and further relief as the Court may deem just
25 and proper.

26 //

27 //

1 DATED: February 18, 2015.

2 OGLETREE, DEAKINS, NASH, SMOAK &
3 STEWART, P.C.

4 
5 By: Mark G. Kisicki, Attorney for Republic
6 Waste Services of Southern California, LLC

PROOF OF SERVICE

I am a resident of, or employed in the County of Maricopa, State of Arizona. I am over the age of 18 and not a party to this action. My business address is: Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Esplanade III, Suite 800, 2415 East Camelback Road, Phoenix, Arizona 85016.

On February 18, 2015, I served the following document described as:

ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES
on the persons below as follows:

Jack Perko
Law Offices of Jack Perko
26895 Aliso Creek Road, Suite B66
Aliso Viejo, CA 92656

Attorney for Plaintiff

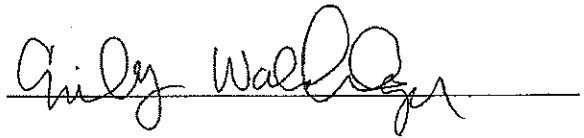
I enclosed the document in a sealed envelope or package addressed to the persons at the addresses as indicated above and:

☒ placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United State Postal Service, in a sealed envelope or package with postage fully prepaid.

I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Phoenix, Arizona.

I declare under penalty of perjury under the laws of the State of Arizona that the above is true and correct.

Executed on February 18, 2015, at Phoenix, Arizona.



20301037.1